

# ADDITIONAL AGENCY LEGISLATIVE PROPOSALS

## Office of the Public Defender

- Proposal #6 – cost of counsel paid to general fund; change reporting on fee assessments
- Proposal #8 – revising penalties/eliminating jail time for certain misdemeanor offenses
- Proposal #9 – clarifying courts' punitive authority including jail time under contempt provisions







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\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act requiring a defendant to pay the costs of assigned counsel to the state general fund; relieving the office of the state public defender for reporting on fee assessments; amending sections 2-15-1028, 46-8-114, 47-1-201, and 47-1-110, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 2-15-1028 MCA, is amended to read:

**"2-15-1028. Public defender commission.** (1) There is a public defender commission.

(2) The commission consists of 11 members appointed by the governor as follows:

(a) two attorneys from nominees submitted by the supreme court;

(b) three attorneys from nominees submitted by the president of the state bar of Montana, as follows:



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(i) one attorney experienced in the defense of felonies who has served a minimum of 1 year as a full-time public defender;

(ii) one attorney experienced in the defense of juvenile delinquency and abuse and neglect cases involving the federal Indian Child Welfare Act; and

(iii) one attorney who represents criminal defense lawyers;

(c) two members of the general public who are not attorneys or judges, active or retired, as follows:

(i) one member from nominees submitted by the president of the senate; and

(ii) one member from nominees submitted by the speaker of the house;

(d) one person who is a member of an organization that advocates on behalf of indigent persons;

(e) one person who is a member of an organization that advocates on behalf of a racial minority population in Montana;

(f) one person who is a member of an organization that advocates on behalf of people with mental illness and developmental disabilities; and



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(g) one person who is employed by an organization that provides addictive behavior counseling.

(3) A person appointed to the commission must have significant experience in the defense of criminal or other cases subject to the provisions of Title 47, chapter 1, or must have demonstrated a strong commitment to quality representation of indigent defendants.

(4) A vacancy on the commission must be filled in the same manner as the original appointment and in a timely manner.

(5) Members shall serve staggered 3-year terms.

(6) (a) The commission is allocated to the department of administration for administrative purposes only, as provided in 2-15-121, except that:

(i) the commission shall hire staff for the commission subject to subsection (6)(b) and the chief public defender shall hire separate staff for the office, except for any support staff provided by the department of administration for centralized services, such as payroll, human resources, accounting, information technology, or other services determined by the commission and the department to be more efficiently provided by the department; and



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(ii) commission and office of state public defender budget requests prepared and presented to the legislature and the governor in accordance with 17-7-111 must be prepared and presented independently of the department of administration. However, nothing in this subsection (6) (a) (ii) prohibits the department from providing administrative support for the budgeting process and including the budget requests in appropriate sections of the department's budget requests for administratively attached agencies.

~~(b) New staff positions for the commission may be added only when the public defender account established pursuant to 47-1-110 has received sufficient revenue pursuant to 46-8-113(1)(a) and (1)(b) to maintain a balance in the account that would sustain any staff position approved by the commission for at least 1 year.~~

(7) While serving a term on the commission, a member of the commission may not serve as a judge, a public defender employed by or under contract with the office of state public defender established in 47-1-201, a county attorney or a deputy county attorney, the attorney general or an assistant attorney general, the United States



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district attorney or an assistant United States district attorney, or a law enforcement official.

(8) Members of the commission may not receive a salary for service on the commission but must be reimbursed for expenses, as provided in 2-18-501 through 2-18-503, while actually engaged in the discharge of official duties.

(9) The commission shall establish procedures for the conduct of its affairs and elect a presiding officer from among its members."

{Internal References to 2-15-1028:  
47-1-103 X 47-1-202 X}

**Section 2.** Section 46-8-114, MCA, is amended to read:

**"46-8-114. Time and method of payment.** When a defendant is sentenced to pay the costs of assigned counsel pursuant to 46-8-113, the court may order payment to be made within a specified period of time or in specified installments. Payments must be made to the clerk of the sentencing court for allocation as provided in 46-18-201, 46-18-232, and 46-18-251 and deposited in the state general fund ~~account established in 47-1-110.~~"

{Internal References to 46-8-114: None }

**Section 3.** Section 47-1-,110, MCA, is amended to read:



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**"47-1-110. Public defender account.** (1) There is a public defender account in the state special revenue fund. Gifts, grants, or donations provided to support the system must be deposited in the account. Money in the account may be used only for the operation of the system.

~~(2) Money to be deposited in the account also includes:~~

~~(a) payments for the cost of a public defender ordered by the court pursuant to 46-8-113 as part of a sentence in a criminal case;~~

~~(b) payments for public defender costs ordered pursuant to the Montana Youth Court Act;~~

~~(c) payments made pursuant to The Crime Victims Compensation Act of Montana and designated as payment for public defender costs pursuant to 53-9-104; and~~

~~(d) payments for the cost of a public defender in proceedings under the provisions of the Uniform Probate Code in Title 72, chapter 5, or proceedings under 53-20-112 for the involuntary commitment of a developmentally disabled person when the respondent is determined to have the financial ability to pay for a public defender and a judge orders payment under 47-1-111."~~

*{Internal References to 47-1-110:*



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2-15-1028 X 46-8-114 X 47-1-201 X }

**Section 4.** Section 47-1-201, MCA, is amended to read:

**"47-1-201. Office of state public**

**defender -- personnel -- compensation -- expenses -- report**

**s.** (1) There is an office of state public defender. The office must be located in Butte, Montana. The head of the office is the chief public defender, who is supervised by the commission.

(2) The chief public defender must be an attorney licensed to practice law in the state. The chief public defender is appointed by and serves at the pleasure of the commission. The position of chief public defender is exempt from the state classification and pay plan as provided in 2-18-103. The commission shall establish compensation for the position commensurate with the position's duties and responsibilities, taking into account the compensation paid to prosecutors with similar responsibilities.

(3) The chief public defender shall hire or contract for and supervise other personnel necessary to perform the function of the office of state public defender and to



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implement the provisions of this chapter, including but not limited to:

(a) the following personnel who are exempt from the state classification and pay plan as provided in 2-18-103:

(i) an administrative director, who must be experienced in business management and contract management;

(ii) a chief contract manager to oversee and enforce the contracting program;

(iii) a training coordinator, appointed as provided in 47-1-210;

(iv) deputy public defenders, as provided in 47-1-215;

(b) assistant public defenders; and

(c) other necessary administrative and professional support staff for the office.

(4) Positions established pursuant to subsections (3)(b) and (3)(c) are classified positions, and persons in those positions are entitled to salaries, wages, benefits, and expenses as provided in Title 2, chapter 18.

(5) The following expenses are payable by the office if the expense is incurred at the request of a public defender:

(a) witness and interpreter fees and expenses provided in Title 26, chapter 2, part 5, and 46-15-116; and



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(b) transcript fees, as provided in 3-5-604.

(6) If the costs to be paid pursuant to this section are not paid directly, reimbursement must be made within 30 days of the receipt of a claim.

(7) The office may accept gifts, grants, or donations, which must be deposited in the account provided for in 47-1-110.

(8) The office shall provide assistance with the budgeting, reporting, and related administrative functions of the office of appellate defender as provided in 47-1-205.

(9) The chief public defender shall establish procedures to provide for the approval, payment, recording, reporting, and management of defense expenses paid pursuant to this section, including defense expenses paid for work performed by or for the office of appellate defender.

(10) ~~(a)~~ The office of public defender is required to report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire public defender system to the legislative fiscal analyst. The report must be provided in an electronic format and include unduplicated count data for all cases for which representation is paid for by the office of



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public defender, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type.

~~(b) The office of public defender is required to report to the legislative fiscal analyst for each fiscal year by September 30 of the subsequent fiscal year on the amount of funds collected as reimbursement for services rendered, including the number of cases for which a collection is made, the number of cases for which an amount is owed, the amount collected, and the amount remaining unpaid. The report must be provided in an electronic format."~~

{ Internal References to 47-1-201:

2-15-1028	2-18-103	3-5-511	3-5-604
3-5-901	3-5-901	3-5-901	3-5-901
3-5-901	26-2-506	41-5-111	41-5-1413
42-2-405	46-4-304	46-8-101	46-8-104
46-15-115	46-17-203	46-21-201	46-21-201
47-1-103	47-1-105	47-1-202	50-20-509
53-9-104	53-9-104	53-20-112	53-21-112
53-21-116	53-21-122	53-21-122	53-24-302
72-5-225	72-5-234	72-5-315	72-5-408
72-5-408	}		

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OPD # 8

\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act revising penalties and eliminating jail time for certain misdemeanor offenses; amending sections 45-6-301, 45-6-302, 45-6-305, 45-6-316, 45-8-101, 45-8-111, 61-5-102, 61-5-212, 61-6-302 and 61-6-304, MCA; and providing an applicability date and an effective date."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 45-6-301, MCA, is amended to read:

**"45-6-301. Theft.** (1) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or



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(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(2) A person commits the offense of theft when the person purposely or knowingly obtains by threat or deception control over property of the owner and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or

(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(3) A person commits the offense of theft when the person purposely or knowingly obtains control over stolen property knowing the property to have been stolen by another and:

(a) has the purpose of depriving the owner of the property;

(b) purposely or knowingly uses, conceals, or abandons the property in a manner that deprives the owner of the property; or



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(c) uses, conceals, or abandons the property knowing that the use, concealment, or abandonment probably will deprive the owner of the property.

(4) A person commits the offense of theft when the person purposely or knowingly obtains or exerts unauthorized control over any part of any public assistance provided under Title 52 or 53 by a state or county agency, regardless of the original source of assistance, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) a fraudulent scheme or device.

(5) A person commits the offense of theft when the person purposely or knowingly obtains or exerts or helps another obtain or exert unauthorized control over any part of any benefits provided under Title 39, chapter 71, by means of:

(a) a knowingly false statement, representation, or impersonation; or

(b) deception or other fraudulent action.

(6) (a) A person commits the offense of theft when the person purposely or knowingly commits insurance fraud as provided in 33-1-1202 or 33-1-1302;



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(b) purposely or knowingly diverts or misappropriates insurance premiums as provided in 33-17-1102; or

(c) purposely or knowingly receives small business health insurance premium incentive payments or premium assistance payments or tax credits under Title 33, chapter 22, part 20, to which the person is not entitled.

(7) A person commits the offense of theft of property by embezzlement when, with the purpose to deprive the owner of the property, the person:

(a) purposely or knowingly obtains or exerts unauthorized control over property of the person's employer or over property entrusted to the person; or

(b) purposely or knowingly obtains by deception control over property of the person's employer or over property entrusted to the person.

(8) (a) Except as provided in subsection (8)(b), a person convicted of the offense of theft of property not exceeding \$1,500 in value shall be fined an amount not to exceed \$1,500 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~ A person convicted of a second offense shall be fined \$1,500 or be imprisoned in the county jail for a term not to exceed 6 months, or both. A person convicted of a third or subsequent offense shall



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be fined \$1,500 and be imprisoned in the county jail for a term of not less than 30 days or more than 6 months.

(b) (i) Except as provided in subsection (8)(c), a person convicted of the offense of theft of property exceeding \$1,500 in value or theft of any amount of anhydrous ammonia for the purpose of manufacturing dangerous drugs shall be fined an amount not to exceed \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both.

(ii) A person convicted of the theft of any commonly domesticated hoofed animal shall be fined an amount of not less than \$5,000 or more than \$50,000 or be imprisoned in a state prison for a term not to exceed 10 years, or both. If a prison term is deferred, the court shall order the offender to perform 416 hours of community service during a 1-year period, in the offender's county of residence. In addition to the fine and imprisonment, the offender's property is subject to criminal forfeiture pursuant to 45-6-328 and 45-6-329.

(c) A person convicted of the offense of theft of property exceeding \$10,000 in value by embezzlement shall be imprisoned in a state prison for a term of not less than 1 year or more than 10 years and may be fined an amount not



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to exceed \$50,000. The court may, in its discretion, place the person on probation with the requirement that restitution be made under terms set by the court. If the terms are not met, the required prison term may be ordered.

(9) Amounts involved in thefts committed pursuant to a common scheme or the same transaction, whether from the same person or several persons, may be aggregated in determining the value of the property."

{ Internal References to 45-6-301:

26-1-608	27-1-718	33-1-1211	33-1-1302
33-17-1102	33-18-401	33-22-2009	39-51-3203
39-71-316	39-71-316	39-71-316	39-71-701
39-71-702	39-71-1006	45-1-205	45-6-314
45-6-315	45-6-328	45-6-328	45-6-328
45-6-328	45-6-328	45-6-328	45-6-328
45-6-328	45-6-328	45-6-328	45-8-405
53-2-107	53-9-111	61-5-205	69-14-1206
69-14-1206	}		

**Section 2.** Section 45-6-302, MCA, is amended to read:

**"45-6-302. Theft of lost or mislaid property.** (1) A person who obtains control over lost or mislaid property commits the offense of theft when the person:

(a) knows or learns the identity of the owner or knows, is aware of, or learns of a reasonable method of identifying the owner;

(b) fails to take reasonable measures to restore the property to the owner; and



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(c) has the purpose of depriving the owner permanently of the use or benefit of the property.

(2) (a) Except as provided in subsection (2)(b), aA  
person convicted of theft of lost or mislaid property:

(i)not exceeding \$1,500 in value shall be fined an  
amount not to exceed \$500; or

(ii) exceeding \$1,500 in value shall be fined an  
amount not to exceed \$500 or be imprisoned in the county  
jail for a period not to exceed 6 months.

(b) A person convicted of a second or subsequent  
offense of theft of lost or mislaid property shall be fined  
an amount not to exceed \$500 or be imprisoned in the county  
jail for a period not to exceed 6 months."

{Internal References to 45-6-302: None }

**Section 3.** Section 45-6-305, MCA, is amended to read:

**"45-6-305. Theft of labor or services or use of property.** (1) A person commits the offense of theft when the person obtains the temporary use of property, labor, or services of another that are available only for hire, by means of threat or deception or knowing that the use is without the consent of the person providing the property, labor, or services.



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(2) (a) Except as provided in subsection (2)(b), aA  
person convicted of theft of labor or services or use of  
property shall be fined not to exceed \$500 ~~or be imprisoned~~  
~~in the county jail for a term not to exceed 6 months, or~~  
both.

(b) A person convicted of a second or subsequent  
offense of theft of labor or services or use of property  
shall be fined an amount not to exceed \$500 or be  
imprisoned in the county jail for a period not to exceed 6  
months."

{ Internal References to 45-6-305:  
45-6-306 }

**Section 4.** Section 45-6-316, MCA, is amended to read:

**"45-6-316. Issuing a bad check.** (1) A person commits  
the offense of issuing a bad check when the person issues  
or delivers a check or other order upon a real or  
fictitious depository for the payment of money knowing that  
it will not be paid by the depository.

(2) If the offender has an account with the  
depository, failure to make good the check or other order  
within 5 days after written notice of nonpayment has been  
received by the issuer is prima facie evidence that the  
offender knew that it would not be paid by the depository.



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(3) (a) Except as provided in subsection (3)(b), aA  
person convicted of issuing a bad check shall be fined not  
to exceed \$1,500 ~~or be imprisoned in the county jail for~~  
~~any term not to exceed 6 months, or both.~~

(b) If the offender has engaged in issuing bad checks  
that are part of a common scheme or if the value of any  
property, labor, or services obtained or attempted to be  
obtained exceeds \$1,500, the offender shall be fined not to  
exceed \$50,000 or be imprisoned in the state prison for a  
~~any~~ term not to exceed 10 years, or both."

{ Internal References to 45-6-316:  
27-1-717 44-1-1103 }

**Section 5.** Section 45-8-101, MCA, is amended to read:

**"45-8-101. Disorderly conduct.** (1) A person commits  
the offense of disorderly conduct if the person knowingly  
disturbs the peace by:

- (a) quarreling, challenging to fight, or fighting;
- (b) making loud or unusual noises;
- (c) using threatening, profane, or abusive language;
- (d) rendering vehicular or pedestrian traffic  
impassable;
- (e) rendering the free ingress or egress to public or  
private places impassable;



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(f) disturbing or disrupting any lawful assembly or public meeting;

(g) transmitting a false report or warning of a fire or other catastrophe in a place where its occurrence would endanger human life;

(h) creating a hazardous or physically offensive condition by any act that serves no legitimate purpose; or

(i) transmitting a false report or warning of an impending explosion in a place where its occurrence would endanger human life.

(2) Except as provided in subsection (3), a person convicted of the offense of disorderly conduct shall be fined an amount not to exceed \$100 or be imprisoned in the county jail for a term not to exceed ~~10 days~~ 1 day, or both.

(3) A person convicted of a violation of subsection (1)(i) shall be fined an amount not to exceed \$1,000 or be imprisoned in the county jail for a term not to exceed 1 year, or both."

{ Internal References to 45-8-101:  
23-1-122 23-2-526 87-1-506 }

**Section 6.** Section 45-8-111, MCA, is amended to read:



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### "45-8-111. Public nuisance. (1) "Public nuisance"

means:

(a) a condition that endangers safety or health, is offensive to the senses, or obstructs the free use of property so as to interfere with the comfortable enjoyment of life or property by an entire community or neighborhood or by any considerable number of persons;

(b) any premises where persons gather for the purpose of engaging in unlawful conduct; or

(c) a condition that renders dangerous for passage any public highway or right-of-way or waters used by the public.

(2) A person commits the offense of maintaining a public nuisance if the person knowingly creates, conducts, or maintains a public nuisance.

(3) Any act that affects an entire community or neighborhood or any considerable number of persons, as specified in subsection (1)(a), is no less a nuisance because the extent of the annoyance or damage inflicted upon individuals is unequal.

(4) An agricultural or farming operation, a place, an establishment, or a facility or any of its appurtenances or the operation of those things is not or does not become a



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public nuisance because of its normal operation as a result of changed residential or commercial conditions in or around its locality if the agricultural or farming operation, place, establishment, or facility has been in operation longer than the complaining resident has been in possession or commercial establishment has been in operation.

(5) Noises resulting from the shooting activities at a shooting range during established hours of operation are not considered a public nuisance.

(6) A person convicted of maintaining a public nuisance shall be fined not to exceed \$500 ~~or be imprisoned in the county jail for a term not to exceed 6 months, or both.~~ Each day of the conduct constitutes a separate offense."

{ Internal References to 45-8-111:

7-14-2141 16-6-312 23-1-122 23-2-526  
87-1-506 }

**Section 7.** Section 61-5-102, MCA, is amended to read:

**"61-5-102. Drivers to be licensed -- penalties.**

(1) (a) Except as provided in 61-5-104, a person may not drive a motor vehicle upon a highway in this state unless the person has a valid Montana driver's license. A person



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may not receive a Montana driver's license until the person surrenders to the department all valid driver's licenses issued by any other jurisdiction. A person may not have in the person's possession or under the person's control more than one valid Montana driver's license at any time.

(b) Except as provided in subsection (1)(c), the penalty for a ~~first~~ violation of this section is a fine of not more than \$500, ~~imprisonment for not more than 6 months, or both a fine and imprisonment. The penalty for second and subsequent violations of this section is a fine of not more than \$500 and imprisonment for not less than 2 days or more than 6 months.~~

(c) A person who is eligible to hold a driver's license and has obtained a valid driver's license but has not renewed the license as provided in 61-5-111(3)(c) is not subject to the penalties in subsection (1)(b).

(2) (a) (i) Except as provided in subsection (2)(a)(ii), a license is not valid for the operation of a motorcycle unless the holder of the license has completed the requirements of 61-5-110 and the license has been clearly marked with the words "motorcycle endorsement".

(ii) A motorcycle endorsement is not required for the operation of a low-speed electric vehicle or a motorcycle



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that is propelled by an electric motor or other device that transforms stored electrical energy into the motion of the vehicle, has a fully enclosed cab, is equipped with three wheels in contact with the ground, and is equipped with a seat and seatbelts.

(b) A license is not valid for the operation of a commercial motor vehicle unless the holder of the license has completed the requirements of 61-5-110, the license has been clearly marked with the words "commercial driver's license", and the license bears the proper endorsement for:

(i) the specific vehicle type or types being operated; or

(ii) the passengers or type or types of cargo being transported.

(3) A low-speed restricted driver's license is not valid for the operation of a motor vehicle other than a low-speed electric vehicle or a golf cart.

(4) When a city or town requires a licensed driver to obtain a local driving license or permit, a license or permit may not be issued unless the applicant presents a state driver's license valid under the provisions of this chapter."

{Internal References to 61-5-102:



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61-5-104 61-5-212 }

**Section 8.** Section 61-5-212, MCA, is amended to read:

**"61-5-212. Driving while license suspended or  
revoked -- penalty -- second offense of driving without  
valid license or licensing exemption -- seizure of vehicle  
or rendering vehicle inoperable.** (1) (a) A person commits  
the offense of driving a motor vehicle without a valid  
license or without statutory exemption or during a  
suspension or revocation period if the person drives:

(i) a motor vehicle on any public highway of this  
state at a time when the person's privilege to drive or  
apply for and be issued a driver's license is suspended or  
revoked in this state or any other state;

(ii) a commercial motor vehicle while the person's  
commercial driver's license is revoked, suspended, or  
canceled in this state or any other state or the person is  
disqualified from operating a commercial motor vehicle or  
from obtaining a commercial driver's license; or

(iii) a motor vehicle on any public highway of this  
state without possessing a valid driver's license, as  
provided in 61-5-102, or without proof of a statutory  
exemption, as provided in 61-5-104.



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(b) (i) Except as provided in subsection (1)(b)(ii), a person convicted of the offense of driving a motor vehicle without a valid driver's license or without proof of a statutory exemption for the second time or driving during a suspension or revocation period shall be ~~punished by imprisonment for not less than 2 days or more than 6 months and may be~~ fined not more than \$500.

(ii) If the reason for the suspension or revocation was that the person was convicted of a violation of 61-8-401, 61-8-406, or 61-8-411 or a similar offense under the laws of any other state or the suspension was under 61-8-402 or 61-8-409 or a similar law of any other state for refusal to take a test for alcohol or drugs requested by a peace officer who believed that the person might be driving under the influence, the person shall be punished by imprisonment for a term of not less than 2 days or more than 6 months or a fine not to exceed \$2,000, or both, and in addition, the court may order the person to perform up to 40 hours of community service.

(2) (a) Upon receiving a record of the conviction of any person under this section upon a charge of driving a noncommercial vehicle while the person's driver's license, privilege to drive, or privilege to apply for and be issued



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a driver's license was suspended or revoked, the department shall extend the period of suspension or revocation for an additional 1-year period.

(b) Upon receiving a record of the conviction of any person under this section upon a charge of driving a commercial motor vehicle while the person's commercial driver's license was revoked, suspended, or canceled or the person was disqualified from operating a commercial motor vehicle under federal regulations, the department shall suspend the person's commercial driver's license in accordance with 61-8-802.

(3) The vehicle owned and operated at the time of an offense under this section by a person whose driver's license is suspended for violating the provisions of 61-8-401, 61-8-402, 61-8-406, 61-8-409, 61-8-410, or 61-8-411 must, upon a person's first conviction, be seized or rendered inoperable by the county sheriff of the convicted person's county of residence for a period of 30 days.

(4) The sentencing court shall order the action provided for under subsection (3) and shall specify the date on which the vehicle is to be returned or again rendered operable. The vehicle must be seized or rendered



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inoperable by the sheriff within 10 days after the conviction.

(5) A convicted person is responsible for all costs associated with actions taken under subsection (3). Joint ownership of the vehicle with another person does not prohibit the actions required by subsection (3) unless the sentencing court determines that those actions would constitute an extreme hardship on a joint owner who is determined to be without fault.

(6) A court may not suspend or defer imposition of penalties provided by this section."

{Internal References to 61-5-212:

61-8-422 61-8-733 61-8-733 }

**Section 9.** Section 61-6-302, MCA, is amended to read:

**"61-6-302. Proof of compliance.** (1) The registration receipt required by 61-3-322 must contain a statement that unless the vehicle is eligible for an exemption under 61-6-303, it is unlawful to operate the vehicle without a valid motor vehicle liability insurance policy, a certificate of self-insurance, or a posted indemnity bond, as required by 61-6-301.

(2) Each owner or operator of a motor vehicle shall carry in the motor vehicle an insurance card approved by



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the department but issued by the insurance carrier to the motor vehicle owner as proof of compliance with 61-6-301. If the card is issued under a commercial automobile insurance policy or a self-insured fleet, the card must indicate the status as "commercially insured" or "fleet". A motor vehicle owner or operator shall exhibit the insurance card upon demand of a justice of the peace, a city or municipal judge, a peace officer, a highway patrol officer, or a field deputy or inspector of the department. A person commits an offense under this subsection if the person fails to carry the insurance card in a motor vehicle or fails to exhibit the insurance card upon demand of a person specified in this subsection.

(3) In lieu of charging an operator who is not the owner of a vehicle with violating subsection (2), the officer may issue a complaint and notice to appear charging the owner with a violation of 61-6-301 and serve the complaint and notice to appear on the owner of the vehicle:

- (a) personally; or
- (b) by certified mail, return receipt requested, at the address for the owner listed on the registration receipt for the vehicle or, following query through available law enforcement systems, at the address



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maintained for the vehicle's owner by the jurisdiction in which the vehicle is titled and registered, or both.

(4) An owner or operator charged with violating subsection (2) may not be convicted if:

(a) the ~~arresting~~ officer or another person authorized to access information from the online motor vehicle liability insurance verification system under 61-6-309 submits to the system, when implemented, a request that provides proof of insurance valid at the time of arrest; or

(b) if the system under 61-6-157 is not available, the person produces in court or the office of the ~~arresting~~ officer proof of insurance valid at the time of arrest."

{Internal References to 61-6-302:

61-6-105 61-6-123 61-6-142 61-6-157  
61-6-304 61-6-304 61-6-304 61-6-309  
61-6-309 61-11-203 }

**Section 10.** Section 61-6-304, MCA, is amended to read:

**"61-6-304. Penalties.** (1) Conviction of a first offense under 61-6-301 or 61-6-302 is punishable by a fine of not less than \$250 or more than \$500 ~~or by imprisonment in the county jail for not more than 10 days, or both.~~ A second conviction is punishable by a fine of \$350 ~~or by~~



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~~imprisonment in the county jail for not more than 10 days,~~  
~~or both.~~ A third or subsequent conviction is punishable by  
a fine of \$500 or by imprisonment in the county jail for  
not more than 6 months, or both.

(2) Upon a second or subsequent conviction under  
61-6-301 or 61-6-302, the sentencing court shall order the  
surrender of the vehicle registration receipt and license  
plates for the vehicle operated at the time of the offense  
if that vehicle was operated by the registered owner or a  
member of the registered owner's immediate family or by a  
person whose operation of that vehicle was authorized by  
the registered owner. The court shall report the surrender  
of the registration receipt and license plates to the  
department, which shall immediately suspend the vehicle's  
registration. The vehicle's registration status may not be  
reinstated until proof of compliance with 61-6-301 is  
furnished to the department, but if the vehicle is  
transferred to a new owner, the new owner is entitled to  
register the vehicle. The surrendered license plates must  
be recycled or destroyed by the court unless the court  
decides to retain the license plates for the owner until  
the registration suspension has been completed or the  
requirements for a restricted registration receipt have



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been met. Upon proof of compliance with 61-6-301 and payment of fees required under 61-3-333 for replacement license plates and registration decal and under 61-3-341 for a replacement registration receipt, during the period of 90 days from the date of a second conviction or 180 days from the date of a third or subsequent conviction, the department shall issue a restricted registration receipt to the offender. A restricted registration receipt limits the use of the motor vehicle operated at the time of the offense to use solely for employment purposes until the date indicated on the restricted registration receipt.

(3) Upon a fourth or subsequent conviction under 61-6-301 or 61-6-302, the court shall order the surrender of the driver's license of the offender, if the vehicle operated at the time of the offense was registered to the offender or a member of the offender's immediate family. The court shall send the driver's license, along with a copy of the complaint and the dispositional order, to the department, which shall immediately suspend the driver's license. The department may not reinstate a driver's license suspended under this subsection until the registered owner provides the department proof of



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compliance with 61-6-301 and the department determines that the registered owner is otherwise eligible for licensure.

(4) The court may suspend a required fine only upon a determination that the offender is or will be unable to pay the fine.

(5) A court may not defer imposition of penalties provided by this section.

(6) An offender is considered to have been previously convicted for the purposes of sentencing if less than 5 years have elapsed between the commission of the present offense and a previous conviction."

{Internal References to 61-6-304:  
61-6-105 }

NEW SECTION. **Section 11. Applicability.** [This act] applies to offenses committed on or after July 1, 2015.

NEW SECTION. **Section 12. {standard} Effective date.**  
[This act] is effective July 1, 2015.

-END-







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\*\*\* Bill No. \*\*\*

Introduced By \*\*\*\*\*

By Request of the (Agency or Department)

A Bill for an Act entitled: "An Act clarifying the courts' punitive authority including jail time under the contempt provisions, even if no jail time is imposed as part of the original sentence; amending section 46-8-101, MCA."

Be it enacted by the Legislature of the State of Montana:

**Section 1.** Section 46-8-101, MCA, is amended to read:

**"46-8-101. Right to counsel.** (1) During the initial appearance before the court, every defendant must be informed of the right to have counsel and must be asked if the aid of counsel is desired.

(2) Except as provided in subsection (3), if the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a felony or the offense is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to



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- represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(3) If the defendant desires assigned counsel because of financial inability to retain private counsel and the offense charged is a misdemeanor and incarceration is a sentencing option if the defendant is convicted, during the initial appearance the court may order that incarceration not be exercised as a sentencing option if the defendant is convicted. If the court so orders, the court shall inform the defendant that the assistance of counsel at public expense through the office of state public defender is not available and that time will be given to consult with an attorney before a plea is entered. If incarceration is waived as a sentencing option, a public defender may not be assigned."

(4) When a defendant, who is sentenced to make payments pursuant to subsection (3) and allowed by 46-18-201, defaults in payment or of any installment, the court on motion of the prosecutor or on its own motion may require the defendant to show cause why the default should not be treated as contempt of court and may issue a show cause



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citation or an arrest warrant requiring the defendant's appearance.

(5) Every defendant cited to show cause pursuant to subsection (4) must be informed of the right to have counsel and must be asked if the aid of counsel is desired. If the defendant desires assigned counsel because of financial inability to retain private counsel the court shall order the office of state public defender, provided for in 47-1-201, to assign counsel to represent the defendant without unnecessary delay pending a determination of eligibility under the provisions of 47-1-111.

(6) Unless the defendant shows that the default was not attributable to an intentional refusal to obey the order of the court or to a failure on the defendant's part to make a good faith effort to make the payment, the court may find that the default constitutes civil contempt.

(7) The term of imprisonment for contempt for nonpayment must be set forth in the judgment and may not exceed 1 day for each \$25 of the payment or 30 days, whichever is the shorter period. A person committed for nonpayment must be given credit toward payment for each day of imprisonment at the rate specified in the judgment.



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(8) If it appears to the satisfaction of the court that the default is not contempt, the court may enter an order allowing the defendant additional time for payment, reducing the amount of the payment or of each installment, or revoking the order for payment of the unpaid portion in whole or in part.

(9) A default in the payment or any installment may be collected by any means authorized by law for the enforcement of a judgment. The writ of execution for collection may not discharge a defendant committed to imprisonment for contempt until the amount of the payment for costs has actually been collected."

{ Internal References to 46-8-101:  
46-7-102 47-1-104 }

-END-